

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District SOUTHERN DISTRICT OF CALIFORNIA
Name of Movant JOSE FELIX DEL-VILLAR	Prisoner No. 91541-198	Case No. 3:06-cr-01775-BEN
Place of Confinement FCI-HERLONG, P.O. BOX 800, HERLONG, CA 96113		

07 CV 2243 BEN

UNITED STATES OF AMERICA

V.

JOSE FELIX DEL-VILLAR

(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack

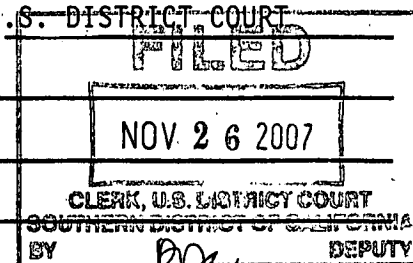
U.S. DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA (SAN DIEGO)

2. Date of judgment of conviction
- 8-24-2006

3. Length of sentence
- 30 MONTHS

4. Nature of offense involved (all counts)
- COUNT 1) ILLEGAL ENTRY 8:1325

COUNT 2) ILLEGAL ENTRY 8:1325

5. What was your plea? (Check one)

(a) Not guilty ☐
(b) Guilty ☒
(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

I PLEAD GUILTY TO BOTH COUNTS.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐
(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

(2)

9. If you did appeal, answer the following:

(a) Name of court U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised _____

(3)

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

- (1) First petition, etc. Yes ☐ No ☒
 (2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I DID NOT REALIZE WHAT HAD HAPPENED UNTIL I GOT TO CALIFORNIA CITY PRISON, THATS
WHERE I RECEIVED THE PRINT OUT TO ALL MY CONVICTIONS. I REALIZE NOW, THAT I WAS
DECEIVED BY MY LAWYER AND NOT ADEQUATELY REPRESENTED. NOW, I WANT TO CORRECT
AND REMEDY THE MISTAKES MY LAWYER MADE.

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
 (b) Conviction obtained by use of coerced confession.

(4)

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
 (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
 (e) Conviction obtained by a violation of the privilege against self-incrimination.
 (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
 (g) Conviction obtained by a violation of the protection against double jeopardy.
 (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
 (i) Denial of effective assistance of counsel.
 (j) Denial of right of appeal.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____
- _____
- _____
- _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing CAREY DAWN GORDEN, FEDERAL DEFENDERS OF SAN DIEGO,

225 BROADWAY., SUITE 900, SAN DIEGO, CA 92101-5008

(b) At arraignment and plea SAME

(c) At trial NO

(d) At sentencing SAME

(6)

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(e) On appeal NO

(f) In any post-conviction proceeding NO

(g) On appeal from any adverse ruling in a post-conviction proceeding NO

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

A. Ground one: CONSTITUTIONAL VIOLATION OF THE SIXTH AMENDMENT, INEFFECTIVE ASSISTANCE OF COUNSEL.

Supporting FACTS (state *briefly* without citing cases or law): _____

A) COUNSEL FAILED TO CONSTRUE AN ADEQUATE DEFENSE, ALLOWING PETITIONER TO PLEAD GUILTY TO COUNT 1 (EVENTHOUGH PETITIONER WAS IN MEXICO WHEN SAID CHARGE TOOK PLACE).

B) PETITIONER REPEATEDLY INFORMED COUNSEL. THAT ON THAT DATE, PETITIONER WAS IN TIJUANA, MEXICO. (SEE ATTACHMENT)

B. Ground two: CONSTITUTIONAL VIOLATION OF THE FIFTH AMENDMENT, VIOLATION OF DOBBLE JEOPARDY.

Supporting FACTS (state *briefly* without citing cases or law): _____

A) THE DOUBLE JEOPARDY CLAUSE PROTECTS AGAINST THE RISK OF DOUBLE PUNISHMENT BY GUARANTEEING THAT A DEFENDANT WILL NOT BE PUT TO TRIAL TWICE FOR THE SAME OFFENSE.

B) DOUBLE JEOPARDY BARS SUBSEQUENT PROSECUTIONS FOR A SINGLE ACT.

C) PETITIONER WAS CONVICTED TWICE FOR THE SAME ACT. (SEE ATTACHMENTS)

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

(5)

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D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

(ATTACHMENT) TO A.GROUND ONE:

SUPPORTING FACTS:

B) (CONTINUED) COUNSEL SAID TO PETITIONER, " I AM GOING TO CHARGE YOU WITH ANOTHER ILLEGAL ENTRY", AND PETITIONER SAID, "HOW ARE YOU GOING TO DO THAT IF I WAS IN MEXICO?".

C) THE SIXTH AMENDMENT GUARANTEES THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN CRIMINAL PROSECUTIONS, STRICKLAND V. WASHINGTON. COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT, RESULTING IN AN UNRELIABLE AND FUNDAMENTALLY UNFAIR OUTCOME IN THE PROCEEDING.

D) THE COUNSELS DEFICIENT PERFORMANCE REFLECTED ON PETITIONER, DUE TO THE COUNSELS NEGLECT AND FAILURE TO INVESTIGATE PETITIONERS CASE ADEQUATELY AND PROPERLY, PETITIONER HAS PLEAD GUILTY TO TWO ILLEGAL ENTRY COUNTS, ONE OF THE COUNTS IS FALSE, BECAUSE PETITIONER WAS IN MEXICO, WHEN SAID COUNT TOOK PLACE.

(CONTINUED) GROUND TWO:

B.) SUPPORTING FACTS:

D) AS A RESULT, PETITIONER IS SERVING A CONSECUTIVE SENTENCE.

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

IN PRO-SE

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-14-2007

Date

Felix Del Villar

Signature of Movant

CERTIFICATE OF SERVICE

I JOSE FELIX DEL-VILLAR, hereby certify that on this 15TH day
of NOVEMBER, 2007 I mailed a true and correct copy of the foregoing:
"§§2255 MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE"

to the following individual(s):

ROBERTA WESTDAL (DISTRICT COURT)
CLERK OF THE COURT
880 FRONT ST., ROOM 4290
SAN DIEGO, CA 92101-8900

by U.S. Postal Service, postage prepaid.*

Jose Felix Del-Villar

JOSE FELIX DEL-VILLAR

REG.#91541-198

FCI HERLONG (Federal Correctional Institution)
P.O. Box 800
Herlong, California [96113]

*Pleadings by prisoners who represent themselves are to be considered filed
at the moment such pleadings are delivered to prison authorities for forwarding
to the Clerk of Court. Houston v. Lack, 487 U.S. 266 (1988).

CERTIFICATE OF SERVICE

JS44

(Rev. 07/89)

CIVIL COVER SHEET

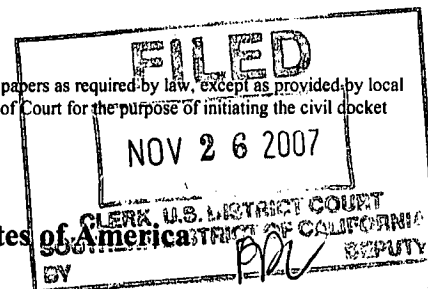
The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Jose Felix Del-Villar

DEFENDANTS

United States



(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Lassen

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jose Felix Del-Villar 91541-198
FCI-Herlong
PO Box 800
Herlong, CA 96113

ATTORNEYS (IF KNOWN)

07 CV 2243 BEN

U.S. Attorney

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2255

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395R) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input checked="" type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

11/26/07

SIGNATURE OF ATTORNEY OF RECORD

PDL